operations support systems.[6] Neither the statute nor the Commission's rules impose such a requirement, however, nor should one now be imposed.

On the contrary, while the Commission has concluded that incumbent carriers must provide non-discriminatory access to their existing operations support systems, it also has made it clear that they may do so in any way that allows competitors to provide service in "substantially the same time and manner" that the incumbent provides service to its own customers. *Local Competition Order* at ¶518. So long as a Bell company can demonstrate that it has systems and processes in place that are capable of meeting this standard – and that they are capable of doing so at the volumes it reasonably expects to receive – there simply is no rational reason to deny it long distance relief solely because its internal systems for processing orders (once they have been received from a competitor) may, in some instances, require a degree of manual intervention.

Conversely, a company that demonstrated a high level of flow through, but whose actual performance showed that it could not handle reasonably expected volumes of orders in a way that would allow competitors to provide service in "substantially the same time and manner" that the incumbent provides service to its own customers, may nonetheless fail to qualify for long distance relief. In short, the amount of "flow through" or "fully automated processing" provided by a Bell company is a red herring – the

[6] In this context, fully automated access means that, in addition to the capability to receive orders from competitors over an electronic interface, once the orders are received they flow mechanically through the ordering process into the service order processors without the need for manual handling.

relevant question is whether it can handle transactions for competing carriers consistent with the Commission's standard.

As a result, it would be arbitrary and unreasonable to adopt a categorical rule requiring fully automated processing on the limited facts of a single application. This is especially true given that future applications are likely to present different facts, and different levels of proof. For example, when Bell Atlantic files its applications, they will be supported by concrete proof of our capability to handle actual commercial volumes notwithstanding the fact that some types of orders may have to be processed with some manual intervention. The Commission should not foreclose such proof.

7. The Commission should not adopt uniform national performance measures or standards. The Commission should reject Sprint's invitation (at 37-38) to set uniform national performance measures by which all section 271 applications can be judged. The Commission has already appropriately declined to adopt mandatory performance measurements, standards, or enforcement mechanisms.[7] *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, RM-9101, Notice of Proposed Rulemaking (rel. April 17, 1998), ¶¶23, 125, 130 ("*Performance Measurements NPRM*"). The 1996 Act establishes a process of negotiation, with arbitration by state commissions if necessary, for carriers to set the terms and conditions governing

[7] The Commission does not have authority to adopt mandatory performance measurements, standards, or enforcement mechanisms. Under the Communications Act of 1934, as amended, jurisdiction over the intrastate provision of telecommunications services, including services to competing carriers, belongs to the states. 47 U.S.C. § 152(b).

interconnection of their networks, purchase of services for resale, and access to unbundled network elements. 47 U.S.C. §252. And this is the process that must be used to establish performance measures and standards.

The Commission should also reject Sprint's argument (at 28) that long distance relief cannot be granted until national standards for OSS interfaces have been developed and "stress-tested in the market." The Commission has already twice rejected Sprint's request to condition the requirement to provide access to OSS functions on the creation of national technical standards. Moreover, the Commission has determined that there is no need to address the issue of uniform technical standards for OSS interfaces because "industry bodies, in particular the committees working under the aegis of the Alliance for Telecommunications Industry Solutions (ATIS), are already developing guidelines for electronic interfaces" and "have made significant progress." *Performance Measurements NPRM* at ¶127. There is no reason for a different conclusion here.

8. The Commission should reject long distance carrier arguments to use this proceeding to expand the scope of section 272. The long distance incumbents' arguments concerning section 272 do not rely on the actual requirements of the Act, but instead ask the Commission to create new obligations that are extraneous to, or inconsistent with, section 272 and the associated Commission orders.

For example, AT&T (at 84) argues that the requirement that a section 272 affiliate not have common officers or directors with an affiliated BOC (47 U.S.C. §272(b)(3)) is violated by having officers of the 272 affiliate and of the BOC report to a common parent. AT&T is essentially arguing that a section 272 affiliate should not be affiliated

with a Bell company. This argument is directly contrary to the Act's provisions that authorize joint ownership of local and long distance affiliates. Indeed, the Commission has specifically recognized that corporate governance functions provided to both a Bell company and a separated affiliate do not violate the prohibition against common officers and directors.[8]

AT&T (at 82) also seeks to expand the requirement that a transaction between a Bell company and a long distance affiliate be "reduced to writing and available to public inspection" (47 U.S.C. § 272(b)(5)) and apply that requirement to services provided to a long distance affiliate by all nonregulated affiliates as well. Such an expanded requirement would not only rewrite section 272, it would be inconsistent with Commission rules implementing the statutory requirement, which relate only to "transactions with the BOC." 47 C.F.R. § 53.203(e). Indeed, the Commission requires that the public disclosure must be certified as accurate by a Bell company officer – something that could not be done for transactions in which a Bell company is not a party. *Accounting Safeguards Under the Telecommunications Act*, 11 FCC Rcd 17539, ¶122 (1996).

Sprint (at 64) argues that the prohibition against performing operating, installation and maintenance functions associated with an affiliate's switching and transmission facilities actually extend to "all" facilities. While it is unclear what facilities Sprint

[8] *Implementation of the Telecommunication Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, 12 FCC Rcd. 5361, ¶86 (1997). While this order addressed the prohibition against common officers in section 274(b)(5)(A), the Commission recognized that provision has the "same substantive meaning" as section 272(b)(3). *Id.*

would include by its addition of the word "all," it is clear that the Commission requirement is limited. *See Implementation of the Non-Accounting Safeguards of Section 271 and 272*, 11 FCC Rcd 21905, ¶158 (1996) (where the term facilities is modified at the start of the paragraph with terms "transmission and switching"). It also makes no sense to suggest, as Sprint does, that the prohibition on joint ownership is more limited than the prohibition on operation, installation and maintenance. Under Sprint's view, there could be unworkable situations where joint ownership is allowed, but both owners would be prohibited from maintaining what was jointly owned.

AT&T (at 83) complains that affiliated long distance carriers should only be allowed to communicate with a Bell company affiliate through specific pre-identified contact points. While AT&T claims that this new proposed requirement, which is found nowhere in Commission orders or in section 272, is intended to ensure "uniform" access to information and services, in fact it would do the opposite. Non-affiliated long distance carriers are under no such restrictions, and this "uniform" requirement would uniquely disadvantage the affiliated carrier in contradiction of the intent of the Act.

Long distance incumbents also reargue issues that have been specifically rejected by the Commission. For example, AT&T attempts to reargue here the clear language of the South Carolina section 271 order which approved the same type of inbound telemarketing script that BellSouth commits to here. While there is no section 271 requirement to even consider the content of an inbound telemarketing script, it is clear that the Commission's holding on the South Carolina application is consistent with its treatment of the issue in the original section 272 rulemaking, where the Commission held

that "a BOC may market its affiliate's interLATA services to inbound callers, provided that the Bell company also informs such customers of their right to select the interLATA carrier of their choice." *Non-Accounting Safeguards* at ¶292.[9]

9. The public interest standard is not a broad license to add local competition requirements that were rejected by Congress and are unrelated to the long distance authority being sought. The long distance incumbents and their allies renew their argument that the Commission should convert the "public interest" standard into a broad license to add new local competition requirements to those adopted by Congress. In fact, some go so far as to argue that the Commission should impose precisely the type of actual competition standard – here, by requiring that competitors actually be offering service to as much as 50 percent of all residence and business customers in a state -- that the long distance carriers pressed before Congress, and that was rejected. This argument cannot be squared with the Act.

First, the argument that competitors must be operating on some minimum commercial scale is precisely the type of actual competition standard that Congress itself rejected in favor of a competitive checklist that "ensures that a new competitor has the ability to obtain any of the items from the competitive checklist." 142 Cong. Rec. E261-262 (daily ed., Feb. 29, 1996). For example, the Senate expressly rejected an amendment that would have conditioned entry on the presence of a competitor "capable of providing

[9] Similarly, MCI (at 70) challenges use of the BellSouth brand name by the section 272 affiliate. There is no such restriction in section 272 and the Commission rejected identical arguments in the section 272 rulemaking. *See Non-Accounting Safeguards* at ¶154.

a substantial number of business and residential customers" with service – a requirement that precisely parallels the standard urged here. 141 Cong. Rec. S8310, 8319-20 (daily ed., June 14, 1995). And the long distance carriers themselves consistently urged the adoption of an "actual and demonstrable competition" standard, but that standard was rejected by Congress as well.

Second, attempting to use the public interest standard as a vehicle to impose an actual local competition requirement is fundamentally inconsistent with the carefully specified and exhaustive competitive checklist adopted by Congress (after extensive legislative negotiations and compromise), 47 U.S.C. §271(c)(2)(B), and with the express statutory command that the Commission may not add to (or subtract from) the terms of that checklist, 47 U.S.C. §271(d)(4). These provisions together make it abundantly clear that Congress pointedly decided itself to specify the required local competitive conditions necessary to obtain long distance relief, precisely to avoid the sort of open-ended inquiry that these parties seek to reintroduce. As a result, the argument violates basic principles of statutory construction demanding that a statute be read to give coherence to the whole statute: that one provision cannot be read to negate, contradict, or undermine others;[10] and that specific provisions addressing a particular issue (here, the openness of local markets) should not be displaced by a broad interpretation of other provisions.[11]

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[10] *See, e.g., United Sav. Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988); *Grade v. National Solid Wastes Mgt. Ass'n*, 112 S. Ct. 2374, 2384 (1992).

[11] *See, e.g., Custis v. United States*, 114 S. Ct. 1732, 1736 (1994); *John Hancock Mut. Life Ins. Co. v. Harris Trust & Savings Bank*, 114 S. Ct. 517, 524 (1993); *West Virginia Univ. Hosp., Inc. v. Casey*, 499 U.S. 83, 92 (1991); *Green v. Bock Laundry Mach., Co.*, 490 U.S. 504, 524-26 (1989).

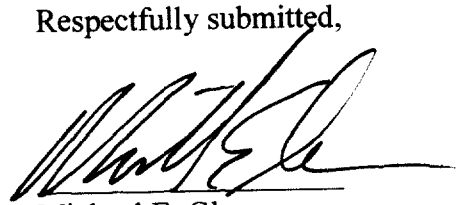
Third, the focus of the public interest inquiry cannot properly be placed on the local market. The only inquiry the Commission is authorized to undertake by the Act is whether "the requested authorization" – that is, the ability to provide in-region long distance service – is in the public interest. As a result, the relevant focus of the public interest inquiry is on the market the Bell company seeks authority to enter – namely, long distance – rather than on the local market. In fact, the Conference Report itself, in the course of describing possible "standards" for the Attorney General to use in her own evaluation focuses on the market to be entered in each of the specific examples it gives. Conf. Rep. 104-458 at 149 (1996).

Nor, finally, can broad invocations of a statutory "purpose" to promote competition substitute for, or overcome, the careful compromises reflected in the statute itself. "Invocation of the 'plain purpose' of legislation at the expense of the terms of the statute itself takes no account of the processes of compromise and, in the end, prevents the effectuation of legislative intent." *Board of Governors v. Dimension Financial Corp.*, 474 U.S. 361, 374 (1986); *see Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987). Congress specified the checklist as the limit of inquiry into the openness of local markets. A demand for additional requirements on that subject defeats, rather than respects, Congressional intent.

In short, reading section 271's public interest standard to authorize the Commission to impose broad new local competition requirements of the type urged by the long distance incumbents and their allies would violate the fundamental obligation of

courts (and agencies) to make "sense rather than nonsense" out of the entire relevant law. *West Virginia Univ. Hosp.*, at 92.

Respectfully submitted,



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August 28, 1998

ATTACHMENT A

Excerpts From State Orders

1. "[T]he Commission agrees that a final determination on this matter rests with the FCC. . . . If the FCC should change its position, then the Commission expects interconnection agreements to be applied in accordance with the FCC's new policy. Moreover, the parties will be directed to bring the FCC's final determination to the Commission's attention in order to allow it to consider whether any further action is appropriate." MCI Telecommunications Corporation, Case No. 97-1210-T-PC at 29-30 (W.Va. PSC Jan. 13, 1998).

2. "Moreover, we note this issue is currently being considered by the FCC and may ultimately be resolved by it. . . . In the event the FCC issues a decision that requires revision to the directives announced herein, the Commission expects the parties will so advise it." Letter Order by Daniel Gahagan, Executive Secretary, Maryland Public Service Commission, at 1 (Md. PSC Sept. 11, 1997).

3. "[P]rior to a decision from the Federal Communications Commission on the issue of reciprocal compensation for traffic to ISPs within a local calling scope, the parties shall compensate one another for such traffic in the same manner that local calls to non-ISP end users are compensated, subject to a true-up following the Federal Communication Commission's determination on the issue." In re Birch Telecom of Missouri, Inc., 1998 WL 324141 *5 (Mo. PSC Apr. 24, 1998).

4. "As to the meaning of the FCC's prior rulings and pronouncements, the Commission is not persuaded that the FCC has ruled as Ameritech asserts. . . . When the FCC rules in the pending docket, the Commission can determine what action, if any, is required." In re Brooks Fiber Communications of Michigan, Inc., Case No. U-1178, et al., at 14-15 (Mich. PSC Jan. 28, 1998).

5. "[T]he precise issue under review in the instant case is currently being decided by the FCC. . . . Any ruling by the FCC on that issue will no doubt affect future dealings between the parties on the instant case." "Instead of classifying the web sites as the jurisdictional end of the communication, the FCC has specifically classified the ISP as an end user. [citation omitted] Given the absence of an FCC ruling on the subject, this court finds it appropriate to defer to the ICC's finding of industry practice regarding termination." Illinois Bell Tel. Comp. v. Worldcom Technologies, Inc., No. 98 C 1925, Mem. Op. and Order at 18, 27 (N.D. Ill. July 21, 1998).

6. "The Commission will adopt the exemption permitted by the FCC. However, the Agreement should indicate that if and when the FCC modifies the access charge exemption, the Agreement will also be modified." MFS Communications Comp., Inc., 1996 WL 787940 *5 (Ariz. Corp. Com'n Oct. 29, 1996).

7. An important consideration is "whether or not pending FCC proceedings counsel in favor of deferring action," but "the FCC has had occasion to state its position on the issue and has not, thus far, definitively addressed the issue." Petition for Declaratory Order of TCG Delaware Valley, Inc., P-00971256 at 20 (Pa. PUC June 16, 1998).

8. "Irrespective of how the FCC's 1983 access charge exemption policy might otherwise be interpreted, for purposes of this cause the more recent Telecommunications Act and the FCC's Universal Service Order would provide the controlling federal precedent. . . . No support has been offered to show that the FCC has acted in any manner to limit or dictate the type of compensation local exchange carriers can assess each other under an interconnection agreement for termination of traffic destined to ISPs." In re Application of Brooks Fiber Communications of Oklahoma, Inc., Cause No. 970000548, Order 423626, at 10-11 (Okla. PSC June 3, 1998).

9. "The FCC has not squarely addressed this issue, although it may do so in the future. While both parties presented extensive exegeses on the obscurities of FCC rulings bearing on ISPs, there is nothing dispositive in the FCC rulings thus far." In re Interconnection Agreement Between BellSouth Telecommunications, Inc. And US LEC of North Carolina, LLC, Docket No. P-55, SUB 1027 at 7 (N.C. PUC Feb. 26, 1998).

10. "We have searched the Act and the FCC Interconnection Order and find no reference to this issue." In re Petition of MFS Communications Comp., Inc., Docket No. 96A-287T, at 30 (Colo. PUC Nov. 5, 1996).

11. Based on MFS's argument that the issue is governed by the enhanced service provider exemption, "[t]here is no reason to depart from existing law or speculating what the FCC might ultimately conclude in a future proceeding." In re MFS Communications Comp., Inc., 1996 WL 768931 *13 (Or. PUC Dec. 9, 1996).

12. "All parties agree that the FCC has for many years declared that enhanced service providers, which include ISPs, may obtain services as end users under intrastate tariffs." "Based upon the long-standing position of the FCC that existed years before the execution of the Interconnection Agreement, the Hearing Officer concludes that the term 'Local Traffic' . . . includes, as a matter of law, calls to ISPs." In re Petition of Brooks Fiber, Docket No. 98-00118 (Tenn. Reg. Auth. Apr. 21, 1998).

13. Recognizing that the issue is pending at the FCC but concluding that "postponing a Commission decision to await a Federal Communications Commission decision is not in the parties' interest or in the public interest." Letter Order from Lynda L. Dorr, Secretary to the Public Service Comm'n of Wisconsin, to Rhonda Johnson and Mike Paulson, 5837-TD-100, 6720-TD-100 (Wisc. PSC May 13, 1998).

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 1998, a copy of the foregoing "Reply Comments of the Bell Atlantic Telephone Companies" was sent by first class mail, postage prepaid, to the parties on the attached list.

Jennifer L. Hoh

* Via hand delivery.

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